

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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JOSE RODRIGUEZ,

Plaintiff,

-against-

MEMORANDUM & ORDER  
18-CV-00203 (JS) (AKT)

NASSAU COUNTY POLICE DEPARTMENT,  
and JOHN DOE,

Defendants.

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APPEARANCES

For Plaintiff: Jose Rodriguez, pro se  
17002714  
Nassau County Correctional Center  
100 Carman Avenue  
East Meadow, NY 11554

For Defendants: No appearances.

SEYBERT, District Judge:

On January 12, 2018, incarcerated pro se plaintiff Jose Rodriguez ("Plaintiff") filed a Complaint in this Court pursuant to 42 U.S.C. § 1983 ("Section 1983") against the Nassau County Police Department (the "NCPD") and an unidentified police officer alleged to work at the Baldwin Police Department ("John Doe" and together, "Defendants"), accompanied by an application to proceed in forma pauperis.

Upon review of the declaration in support of the application to proceed in forma pauperis, the Court finds that Plaintiff is qualified to commence this action without prepayment of the filing fee. See 28 U.S.C. §§ 1914(a); 1915(a)(1). Therefore, Plaintiff's request to proceed in forma pauperis is GRANTED. However, for the reasons that follow, the Complaint is

DISMISSED WITH PREJUDICE as against the NCPD and WITHOUT PREJUDICE as against John Doe for failure to state a claim pursuant to 28 U.S.C. §§ 1915(e) (2) (B) (ii), 1915A(b)(1).

THE COMPLAINT<sup>1</sup>

Plaintiff's Complaint is submitted on the Court's Section 1983 Complaint form and is brief. The Statement of Claim is a total of three sentences and, in its entirety, alleges:

I can't understand what they said and I'm deaf. I need to have an interpreter at police station during interrogation. John Doe confuse to provide interpreter.

(Compl. ¶ IV.) Plaintiff has left blank the space on the Complaint form that calls for a description of any claimed injuries. (Compl. ¶ IV.A.) For relief, Plaintiff "want[s] to sue the police department for discriminated failure to have an interpreter at police station. During interrogation they violente my due process they not gave me the interpreter." (Compl. ¶ V.)

DISCUSSION

I. In Forma Pauperis Application

Upon review of Plaintiff's declarations in support of his application to proceed in forma pauperis, the Court finds that Plaintiff is qualified to commence this action without prepayment

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<sup>1</sup> The following facts are taken from Plaintiff's Complaint and are presumed to be true for the purposes of this Memorandum and Order. Excerpts from the Complaint as reproduced here exactly as they appear in the original. Errors in spelling, punctuation, and grammar have not been corrected or noted.

of the filing fees. See 28 U.S.C. § 1915(a)(1). Therefore, Plaintiff's request to proceed in forma pauperis is GRANTED.

## II. Application of 28 U.S.C. § 1915

Section 1915 of Title 28 requires a district court to dismiss an in forma pauperis complaint if the action is frivolous or malicious, fails to state a claim upon which relief may be granted, or seeks monetary relief against a defendant who is immune from such relief. See 28 U.S.C. §§ 1915(e)(2)(B)(i)-(iii), 1915A(b). The Court is required to dismiss the action as soon as it makes such a determination. See id. § 1915A(b).

Courts are obliged to construe the pleadings of a pro se plaintiff liberally. See Sealed Plaintiff v. Sealed Defendant, 537 F.3d 185, 191 (2d Cir. 2008); McEachin v. McGuinnis, 357 F.3d 197, 200 (2d Cir. 2004). However, a complaint must plead sufficient facts to "state a claim to relief that is plausible on its face." Bell Atl. Corp. v. Twombly, 550 U.S. 544, 570, 127 S. Ct. 1955, 1974, 167 L. Ed. 2d 929 (2007). "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." Ashcroft v. Iqbal, 556 U.S. 662, 678, 129 S. Ct. 1937, 173 L. Ed. 2d 868 (2009) (citations omitted). The plausibility standard requires "more than a sheer possibility that a defendant has acted unlawfully." Id. at 678; accord Wilson v. Merrill Lynch & Co., 671 F.3d 120, 128 (2d Cir. 2011). While

“‘detailed factual allegations’” are not required, “[a] pleading that offers ‘labels and conclusions’ or ‘a formulaic recitation of the elements of a cause of action will not do.’” Iqbal, 556 U.S. at 678 (quoting Twombly, 550 U.S. at 555).

### III. Rule 8 of the Federal Rules of Civil Procedure

Pursuant to Rule 8(a)(2) of the Federal Rules of Civil Procedure, a pleading must contain “a short and plain statement of the claim showing that the pleader is entitled to relief.” FED. R. CIV. P. 8(a)(2); Swierkiewicz v. Sorema, N.A., 534 U.S. 506, 512, 122 S. Ct. 992, 152 L. Ed. 2d 1 (2002). This short and plain statement must be “sufficient to give the defendants fair notice of what the plaintiff’s claim is and the grounds upon which it rests.” Jones v. Nat’l Commc’ns and Surveillance Networks, 266 F. App’x 31, 32 (2d Cir. Feb. 21, 2008) (internal citations and quotation marks omitted) (unpublished opinion). “The statement should be plain because the principal function of pleadings under the Federal Rules is to give the adverse party fair notice of the claim asserted so as to enable him to answer and prepare for trial.” Salahuddin v. Cuomo, 861 F.2d 40, 42 (2d Cir. 1988).

Under the now well-established Iqbal/Twombly standard, a complaint satisfies Rule 8 only if it contains enough allegations of fact to state a claim for relief that is “plausible on its face.” Twombly, 550 U.S. at 570; Iqbal, 556 U.S. at 678. This “plausibility standard” is governed by “[t]wo working principles.”

Iqbal, 556 U.S. at 670, 678; accord Harris v. Mills, 572 F.3d 66, 71-72 (2d Cir. 2009). First, although the Court must accept all allegations as true, this “tenet” is “inapplicable to legal conclusions;” thus, “[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice,” Iqbal, 556 U.S. at 678; see also Twombly, 550 U.S. at 555, 557 (a pleading that offers “labels and conclusion” or “naked assertion[s]” devoid of “further factual enhancement” does not satisfy Rule 8). Second, only complaints that state a “plausible claim for relief” can survive a motion to dismiss. Iqbal, 556 U.S. at 679. Determining whether a complaint does so is “a context-specific task that requires the reviewing court to draw on its judicial experience and common sense.” Id.; accord Harris, 572 F.3d at 72. “When a complaint does not comply with the requirement that it be short and plain, the court has the power, on its own initiative or in response to a motion by the defendant, to strike any portions that are redundant or immaterial . . . or to dismiss the complaint.” Salahuddin, 861 F.2d at 42.

Rule 8 of the Federal Rules of Civil Procedure also requires that a pleading must contain “a demand for the relief sought, which may include relief in the alternative or different types of relief.” FED. R. CIV. P. 8(a)(3). When a complaint fails to satisfy the Rule 8 pleading standard, including a demand for relief, a district court may dismiss the complaint sua sponte.

France v. Nassau Cty. Jail, 14-CV-2547, 2014 WL 1871937, \*5 (E.D.N.Y. May 6, 2014) (dismissing pro se complaint that, inter alia, did not seek any relief).

#### IV. Section 1983

Section 1983 provides that

[e]very person who, under color of any statute, ordinance, regulation, custom, or usage, of any State . . . subjects, or causes to be subjected, any citizen of the United States . . . to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured . . . .

42 U.S.C. § 1983; accord Rehberg v. Paulk, 566 U.S. 356, 361, 132 S. Ct. 1497, 1501-02, 182 L. Ed. 2d 593 (2012). To state a claim under Section 1983, a plaintiff must "allege that (1) the challenged conduct was attributable at least in part to a person who was acting under color of state law and (2) the conduct deprived the plaintiff of a right guaranteed under the Constitution of the United States.'" Rae v. Cty. of Suffolk, 693 F. Supp. 2d 217, 223 (E.D.N.Y. 2010) (quoting Snider v. Dylag, 188 F.3d 51, 53 (2d Cir. 1999)).

##### A. Claims Against the NCPD

Plaintiff's Section 1983 claims against the NCPD are not plausible because it has no independent legal identity. It is well-established that "under New York law, departments that are merely administrative arms of a municipality do not have a legal identity separate and apart from the municipality and, therefore,

cannot sue or be sued." Davis v. Lynbrook Police Dep't, 224 F. Supp. 2d 463, 477 (E.D.N.Y. 2002); see also Hawkins v. Nassau Cty. Corr. Fac., 781 F. Supp. 2d 107, 109 at n.1 (E.D.N.Y. 2011) (dismissing claims against Nassau County Jail because it is an "administrative arm[ ] . . . of the County of Nassau, and thus lacks the capacity to be sued as a separate entity") (internal quotation marks and citations omitted). Thus, Plaintiff's Section 1983 claims against the NCPD is not plausible and is DISMISSED WITH PREJUDICE pursuant to 28 U.S.C. §§ 1915(e)(2)(b)(ii); 1915A(b). Given Plaintiff's pro se status and affording his Complaint a liberal construction, the Court has considered whether Plaintiff has alleged a plausible Section 1983 claim against the municipality, Nassau County, and finds that he has not for the reasons that follow.

1. Claims As Construed Against Nassau County

It is well-established that a municipality such as Nassau County cannot be held liable under § 1983 on a respondeat superior theory. See Monell v. Dep't of Soc. Servs. of N.Y.C., 436 U.S. 658, 691, 98 S. Ct. 2018, 2036, 56 L. Ed. 2d 611 (1978); Roe v. City of Waterbury, 542 F.3d 31, 36 (2d Cir. 2008). To prevail on a Section 1983 claim against a municipality, a plaintiff must show "that 'action pursuant to official municipal policy' caused the alleged constitutional injury." Cash v. Cty. of Erie, 654 F.3d 324, 333 (2d Cir. 2011) (quoting Connick v. Thompson, 563 U.S. 51,

60, 131 S. Ct. 1350, 1359, 179 L. Ed. 2d 417 (2011)); see also Monell, 436 U.S. at 690-91. “[L]ocal governments . . . may be sued for constitutional deprivations visited pursuant to governmental ‘custom’ even though such a custom has not received formal approval through the body’s official decisionmaking channels.” Monell, 436 U.S. at 690-691 (internal citation omitted).

To establish the existence of a municipal policy or custom, the plaintiff must allege: (1) the existence of a formal policy which is officially endorsed by the municipality, see Connick, 131 S. Ct. at 1359; (2) actions taken or decisions made by municipal policymaking officials, *i.e.*, officials with final decisionmaking authority, which caused the alleged violation of the plaintiff’s civil rights, see Amnesty Am. v. Town of W. Hartford, 361 F.3d 113, 126 (2d Cir. 2004); Jeffes v. Barnes, 208 F.3d 49, 57 (2d Cir. 2000); (3) a practice “so persistent and widespread as to practically have the force of law,” Connick, 131 S. Ct. at 1359; see also Green v. City of N.Y., 465 F.3d 65, 80 (2d Cir. 2006), or that “was so manifest as to imply the constructive acquiescence of senior policy-making officials,” Patterson v. Cty. of Oneida, N.Y., 375 F.3d 206, 226 (2d Cir. 2004) (internal quotation marks and citations omitted); or (4) that “a policymaking official exhibit[ed] deliberate indifference to constitutional deprivations caused by subordinates.” Cash, 654 F.3d at 334 (internal quotation marks and citations omitted); see also Okin v. Vill. of

Cornwall-on-Hudson Police Dep't, 577 F.3d 415, 439 (2d Cir. 2009)

(A municipal custom may be found when "'faced with a pattern of misconduct, [the municipality] does nothing, compelling the conclusion that [it] has acquiesced in or tacitly authorized its subordinates' unlawful actions.'") (quoting Reynolds v. Giuliani, 506 F.3d 183, 192 (2d Cir. 2007) (second alteration in original)).

Here, even affording the pro se Complaint a liberal construction, there are no factual allegations from which the Court could reasonably construe a plausible Section 1983 cause of action against Nassau County. Indeed, "[a] single incident in a complaint . . . does not suffice to show a municipal policy." DeCarlo v. Fry, 141 F.3d 56, 61 (2d Cir. 1998) (internal quotation marks and citation omitted). Accordingly, Plaintiff's Complaint, as construed against Nassau County does not allege a plausible Section 1983 claim.

C. Claim Against John Doe

Here, as is readily apparent, Plaintiff's Complaint does not comport with the pleading requirements of Rule 8, and fails to state a claim upon which relief may be granted even when read liberally. Plaintiff's sparse submission does not allege sufficient facts such that the Court may reasonably construe any plausible claims against John Doe. Nor does the Complaint seek any relief as is required by Federal Rule of Civil Procedure 8(a)(3). Because a party must plead with sufficient factual detail to

“‘nudge[ ] [his or her] claims ... across the line from conceivable to plausible.’” Iqbal, 556 U.S. at 680 (quoting Twombly, 550 U.S. at 570)), Plaintiff’s remaining claims are DISMISSED WITHOUT PREJUDICE pursuant to 28 U.S.C. §§ 1915(e)(2)(B), 1915A(b)(1).

D. Leave to Amend

Given the Second Circuit’s guidance that a pro se complaint should not be dismissed without leave to amend unless amendment would be futile, Cuoco v. Moritsugu, 222 F.3d 99, 112 (2d Cir. 2000), the Court has carefully considered whether leave to amend is warranted here. Because the defects in Plaintiff’s claims against the NCPD are substantive and would not be cured if afforded an opportunity to amend, leave to amend the Complaint against the NCPD is DENIED.

However, in an abundance of caution, Plaintiff is GRANTED leave to file an Amended Complaint in order to allege any valid claims he may have against the municipality, Nassau County, and/or any proper Defendant. Any Amended Complaint shall be clearly labeled “Amended Complaint”, shall bear the same docket number as this Memorandum and Order (“M&O”), 18-CV-0203(JS)(AKT), and shall be filed within thirty (30) days from the date of this M&O. Plaintiff is cautioned that an Amended Complaint completely replaces the original. Therefore Plaintiff must include any and all claims against any Defendant(s) he seeks to pursue in the Amended Complaint. If Plaintiff does not have sufficient

information at this time to identify the police officer he seeks to sue, Plaintiff may continue to name such individual as "John Doe" but shall include factual allegations of conduct or inaction attributable to him in support of Plaintiff's claims.

CONCLUSION

For the reasons set forth above, Plaintiff's application to proceed in forma pauperis is GRANTED, however the Complaint is sua sponte DISMISSED WITH PREJUDICE as against the NCPD for failure to state a claim pursuant to 28 U.S.C. §§ 1915(e)(2)(B)(ii), 1915A(b)(1). The Complaint is DISMISSED WITHOUT PREJUDICE as against John Doe for failure to state a claim pursuant to 28 U.S.C. §§ 1915(e)(2)(B)(ii), 1915A(b)(1). Plaintiff is GRANTED LEAVE TO FILE AN AMENDED COMPLAINT IN ACCORDANCE WITH THIS M&O WITHIN THIRTY (30) DAYS FROM THE DATE AT THE BOTTOM OF THIS PAGE.

The Court certifies pursuant to 28 U.S.C. § 1915(a)(3) that any appeal from this Order would not be taken in good faith and therefore in forma pauperis status is DENIED for the purpose of any appeal. See Coppedge v. United States, 369 U.S. 438, 444-45, 82 S. Ct. 917, 8 L. Ed. 2d 21 (1962).

The Clerk of the Court is further directed to mail a copy of this Memorandum and Order to the pro se Plaintiff.

SO ORDERED.

Dated: June 6, 2018  
Central Islip, New York

/s/ JOANNA SEYBERT  
Joanna Seybert, U.S.D.J.